DOCUMENT RESUME

ED 448 570 EC 308 186

AUTHOR	Walsh, Sharon; Smith, Barbara J.; Taylor, Ross C.
TITLE	IDEA Requirements for Preschoolers with Disabilities: Challenging Behavior. An Excerpt from the IDEA Early Childhood Policy and Practice Guide.
INSTITUTION	Council for Exceptional Children, Arlington, VA.
SPONS AGENCY	Special Education Programs (ED/OSERS), Washington, DC.
ISBN	ISBN-0-86586-366-0
PUB DATE	2000-09-00
NOTE	29p.; Supported by the Associations of Service Providers Implementing IDEA Reforms in Education Partnership, The Policymaker Partnership, Families and Advocates Partnership for Education, and IDEA Local Implementation by Local Administrators Partnership. For the comprehensive IDEA Early Childhood Policy and Practice Guide, see EC 308 185. Produced by the Council for Exceptional Children, Division for Early Childhood. Title page title varies.
CONTRACT	H326A80006
AVAILABLE FROM	Council for Exceptional Children, Associations of Service Providers Implementing IDEA Reforms in Education (ASPIIRE), 1110 North Glebe Road, Arlington, VA 22201-5704; Tel: 877-232-4322 (Toll Free); Fax: 703-264-1637. For full text: http://www.ideapractices.org.
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	*Disabilities; Discipline; *Discipline Policy; *Discipline Problems; Educational Legislation; *Federal Legislation; Legal Responsibility; Preschool Children; Preschool Education; *Prevention; Special Education; Student Evaluation; *Student Placement
IDENTIFIERS	*Individuals with Disabilities Educ Act Amend 1997

ABSTRACT

This booklet is one of a series designed to assist early childhood general educators, early childhood special educators, related service providers, parents, administrators, and others in understanding what the Individuals with Disabilities Education Act (IDEA) now requires for young children with disabilities ages birth through 5 years and their families. This guide addresses the IDEA discipline provisions under Part B as they relate to children ages 3 through 5 years old and their families, and, at a state's discretion, to 2-year-old children with disabilities who will turn 3 during the school year. Presented in a question and answer format, the following areas are addressed: (1) applicability of the discipline provisions; (2) protection for children not yet eligible for special education; (3) prevention of discipline problems; (4) interference with class activities; (5) removal from programs; (6) services provided to students who are removed or suspended; (7) functional behavioral assessments and behavioral intervention plans; (8) student placement; (9) disciplinary procedures that can be used to address dangerous behavior; (10) drugs or weapons; and (11) manifestation determinations. A pullout chart is included at the end of the guide that summarizes evaluation procedures, IEP procedures, personnel development procedures, and discipline procedures. (CR)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 448 570

IDEA Requirements for Preschoolers with Disabilities

Challenging Behavior

An Excerpt from the IDEA Early Childhood Policy and Practice Guide

EC 308186

idea PARTNERSHIPS SERVICE PROVIDERS

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☐ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

CEC DEC

Copyright © September 2000 by The Council for Exceptional Children, 1920 Association Drive, Reston, Virginia 20191-1589.

ISBN 0-86586-366-0

The ASPIIRE[1] Project at The Council for Exceptional Children, is a leadership initiative in partnership with the FAPE, ILIAD and PMP IDEA Partnership Projects[2]. Funding comes from the U.S. Department of Education, Office of Special Education Programs (Cooperative Agreement No. H326A80006). This document was reviewed by the U.S. Office of Special Education Programs (OSEP), the OSEP Project Officer and the ASPIIRE Project Director for consistency with the Individuals with Disabilities Education Act Amendments of 1997. The contents of this document do not necessarily reflect the views or policies of the Department of Education, nor does mention of other organizations imply endorsement by those organizations or the U.S. Government.

[1]Associations of Service Providers Implementing IDEA Reforms in Education Partnership
[2]Families and Advocates Partnership for Education, IDEA Local Implementation by Local Administrators Partnership, The Policymaker Partnership

Additional copies may be obtained from:
The Council for Exceptional Children
1920 Association Dr.
Reston, VA 20191-1589
Voice: 1-888-232-7733
TTY 703-264-9446
FAX 703-264-9494
E-mail: service@cec.sped.org

This publication is electronically available in html and PDF formats on the ideapractices Web site: **www.ideapractices.org**

idea PARTNERSHIPS SERVICE PROVIDERS

CEC The Council for Exceptional Children

IDEAs that Work U.S. Office of Special Education Programs

DEC The Division for Early Childhood

IDEA Requirements for Preschoolers with Disabilities

Challenging Behaviors

An Excerpt from the IDEA Early Childhood Policy and Practice Guide

Sharon Walsh
Barbara J. Smith
Ross C. Taylor
of the Division for Early Childhood of The Council for Exceptional Children

idea PARTNERSHIPS SERVICE PROVIDERS

CEC

DEC

Acknowledgments

ASPIIRE
Associations of Service Providers Implementing IDEA Reforms in Education

The Division for Early Childhood of The Council for Exceptional Children is proud to be a primary partner of the ASPIIRE Partnership Project, which involves more than 19 educational and related services associations that are working together to provide needed information, ideas, and technical assistance to implement the Individuals with Disabilities Education Act of 1997 (IDEA '97). The development of this publication was supported by the ASPIIRE Partnership Project, which is funded by the Office of Special Education Programs, U.S. Department of Education. All materials disseminated from this partnership have been reviewed by the Office of Special Education Programs.

ASPIIRE
1920 Association Drive
Reston, VA 20191-1589
1-877-CEC-IDEA (toll free)
703-264-9480 TTY
www.ideapractices.org

Table of Contents

Background 1

Foreword 4

Note from DEC 6

Overview of Questions 7

Questions and Answers 9

Pullout Chart ..... *Back Cover*

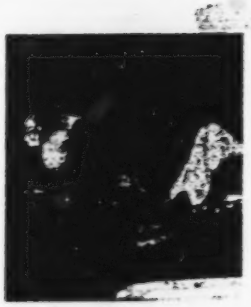

Photo credits:
Mary Louise Hemmeter
Kristie Chlanda

This publication is a subsection of the comprehensive *Policy and Practice Guide IDEA Requirements for Preschoolers with Disabilities*. To order the complete early childhood guide, additional copies of this publication, or other CEC publications, call toll-free at 1-888-232-7733, fax 24-hour to 703-264-9494 or email service@cec.sped.org.

BEST COPY AVAILABLE

Division for Early Childhood

The Division for Early Childhood of The Council for Exceptional Children is a national nonprofit membership organization designed for individuals who work with or on behalf of children with special needs, birth through age eight, and their families. Founded in 1973, DEC is dedicated to promoting policies and practices that support families and enhance the optimal development of children. Children with special needs include those who have disabilities, developmental delays, are gifted/talented, and are at risk of future developmental problems.

For more information about DEC and DEC resources, contact:

Division for Early Childhood
1380 Lawrence St., Suite 650
Denver, CO 80204
303-556-3328 (ph)
303-556-3310 (fax)

www.dec-sped.org

BEST COPY AVAILABLE

Background

The Individuals with Disabilities Education Act (IDEA), previously the Education of the Handicapped Act (EHA), was originally passed by the U.S. Congress in 1975 as Public Law (P.L.) 94-142. Its purpose was to ensure all children and youth with disabilities in the United States access to a free appropriate public education (FAPE).

The legislation was amended in 1986 as P.L. 99-457, and included a new Part H—The Infants and Toddlers with Disabilities program for eligible birth through two year old children with disabilities and their families. It also changed the existing Preschool Incentive Grant program to the Preschool Grants program under Section 619 of Part B for children with disabilities aged three through five. As a result of these federal provisions and significant efforts on the part of professionals, parents, and state and local policy-makers, by 1992 all states were progressing under Part H (now Part C) and all states made FAPE available to all children with disabilities aged 3 through 5.

In the years that followed, IDEA was amended a number of times with the most significant revisions occurring in 1997 as P.L. 105-17, the IDEA Amendments of 1997. According to the U.S. Department of Education (Federal Register, October 22, 1997, pgs. 55028-55029), this reauthorization, referred to as IDEA'97, was directed at improving the results for children with disabilities by promoting the following improvements to Part B:

- early identification and provision of services;
- Individualized Education Programs (IEPs) that focus on improving results through the general curriculum;
- education with nondisabled children;
- higher expectations for children with disabilities and agency accountability;
- strengthened role of parents and partnerships between parents and schools; and,
- reduced paperwork and other burdens.

IDEA '97 has four parts:

- **Part A-General Provisions** includes, among other things, purposes of the law and definitions used throughout IDEA;
- **Part B-Assistance for Education of All Children with Disabilities** contains the requirements for providing special education and related services to children with disabilities from 3 through 21 years of age, including rules for evaluation/eligibility, IEPs, Individualized Family Service Plans (IFSP) for preschoolers at state, local and parent discretion, procedural safeguards. Part B also includes Section 619, the Preschool Grants program, that makes funds available to states for special education and related services for children 3 through 5 years of age with disabilities. At a state's discretion, these funds can also be used to provide FAPE to 2-year-olds with disabilities who will turn 3 during the school year;
- **Part C–Infants and Toddlers with Disabilities** includes the requirements for providing services for infants and toddlers with disabilities, birth to age three years and their families, such as evaluation, determination of eligibility, Individualized Family Service Plans (IFSP), service coordination, and early intervention services; and,
- **Part D–National Activities to Improve the Education of Children with Disabilities** includes provisions for federal funding to support research, personnel preparation, model demonstration, technical assistance, parent training and information centers and State Program Improvement Grants primarily for training and systems change efforts.

To obtain a copy of the final Part B regulations, go to the IDEA Partnership's website at www.ideapractices.org.

For a print copy, call toll-free at 1-877-433-7827 or 1-877-576-7734 (TTY/TTD) to request one free copy.

On June 1, 1998, final regulations implementing the administration of the Preschool Grants program were published at 34 CFR Part 301.

On March 12, 1999 final federal regulations for Part B of IDEA were published in the Federal Register. This followed much debate and review of more than 6,000 public comments received by the U.S. Department of Education.

Related Laws

There are three other major federal laws that impact early childhood services for children with disabilities, aged 3 through 5 years. These three laws are not covered in this guide.

Two of these laws, the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 and their accompanying regulations provide protections against discrimination of children with disabilities. The third is the Head Start Act that includes responsibilities for children with disabilities enrolled in Head Start and Early Head Start programs. These requirements are found in Head Start Performance Standards which are located at 45 CFR (Code of Federal Regulations) Part 1304 and Part 1308.

Four ADA Resources:

"Including All Children: Children with Disabilities in Early Childhood Programs," the Division for Early Childhood (DEC) and the National Association for the Education of Young Children (NAEYC) available for a nominal fee from the NAEYC (800-424- 2460).

"Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act" found at www.usdoj.gov/crt/ada/childq&a.htm

"All Kids Count: Child Care and the ADA" available for a nominal fee from The ARC (800-433-5255 or 800-855-1155 (TDD)).

Videotapes and booklets on the ADA and child care, funded by the Department of Justice, are available from Eastern Washington University (509-623-4246).

For information on Section 504 of the Rehabilitation Act of 1973, refer to regulations at 34 CFR Part 104 and to the Office for Civil Rights in the U.S. Department of Education at 800-421-3481 or at 877-521-2172 (TDD).

For information on ADA, contact the Disability Rights Section of the Civil Rights Division of the U.S. Department of Justice by calling 800-514-0301 or 800-514-0383 (TDD) or check the ADA Home page at www.usdoj.gov/crt/ada/adahom1.htm. The two most relevant sets of ADA regulations related to the provision of services to young children are contained at 28 CFR Part 35 and 28 CFR Part 36.

For information on Head Start, contact the Head Start Publications Management Center at 202-737-1030 or check their website at www.hskids-tmsc.org.

Foreword

This IDEA early childhood policy and practice guide is provided by DEC as one of a series to assist early childhood general educators, early childhood special educators, related service providers, parents, administrators and others in understanding what IDEA now requires for young children with disabilities ages birth through 5 years and their families.

This guide addresses the IDEA discipline provisions under Part B as they relate to children ages 3 through 5 years old and their families, and at a state's discretion, to 2-year-old children with disabilities who will turn 3 during the school year. For these 2-year-old children who begin receiving a free appropriate public education while they are 2 years old, the Part B regulations, not the Part C rules, apply. (Note: Throughout this guide the term "preschooler" is used to include these 2-year-old children. (34 CFR §301.1 and §301.6)

Preschoolers with disabilities receive special education and related services in a variety of school and community sites. The team developing the child's Individualized Education Program (IEP), or the Individualized Family Services Plan (IFSP), determines the appropriate placement based upon the child's needs. Many preschoolers with disabilities receive their special education and related services in community settings including Head Start programs, community preschool classes, and child care centers.

Regulations

The regulations implementing Part B of IDEA '97 apply to children and youth with disabilities ages 3 through 21. The U.S. Department of Education, Office of Special Education Programs (OSEP) is responsible for enforcing these regulations. In this guide, questions and answers are provided to address the Part B discipline procedures from a preschool perspective. Relevant citations from the Part B regulations are included either in the text or in parenthesis at the end of applicable sections. The Part B regulations are published in volume 34 of the Code of Federal Regulations (34 CFR). Within 34 CFR, specific sections are specified as §300.__, example 34 CFR §300.18.

Other Guidance

Non-regulatory guidance or helpful suggestions are included in this document in the left-hand margins in small italics. Appendix A to the Part B regulations (Notice of Interpretation) is referenced in this guide as additional guidance from the U.S. Department of Education to assist in the implementation of the Part B regulations. In addition, several quotes from Attachment 1 (Analysis of Comments and Changes) which also accompanied the final Part B regulations (March 12, 1999 Federal Register) are also provided when applicable and helpful.

Finally, effective practice and resource recommendations from the Division for Early Childhood of The Council for Exceptional Children (DEC of CEC) are included throughout the document. They are cited as "**A Note From DEC**" in bold print.

A Note From: DEC...

Discipline provisions in IDEA '97 were developed in response to increasing national concern and debate surrounding how to address school safety and discipline. The regulations implementing Part B were developed primarily with school-age children and youth in mind. However, these regulations also apply to preschool children with disabilities.

It is important to note that the following questions and answers have been developed from a preschool perspective beginning with a discussion of the preferred focus on preventive strategies for addressing challenging behavior. Following that, the Part B procedures that deal with more serious situations are discussed. Implementation of these procedures must ensure that the environment remains safe for all children and the needs of the preschooler with a disability continue to be met. Because disciplinary procedures are triggered only after a child has been removed for more than 10 school days in the same school year, it is expected that these procedures will rarely be used in situations involving preschoolers.

Check the DEC website for the full text of the DEC Position Paper at www.dec-sped.org and select "Position Statements and Policies;" select the DEC position statement and concept paper on interventions for challenging behavior and other references on preventing or addressing challenging behavior in young children. See DEC's new product: "Practical Ideas for Addressing Challenging Behaviors," for strategies for preventing and reducing challenging behaviors.

Issues related to challenging behaviors and the strategies to address them in the child's current placement should be dealt with through the IEP process. In many situations, the addition of supports and use of strategies may enable the child to effectively stay in their current placement. If a preschool child with a disability is exhibiting challenging behaviors and a new placement is agreed to by the group making the placement, including the parents, the disciplinary procedures would not be triggered. It should be noted that changes in placement might not always be to a more restrictive setting.

DEC has a position statement on interventions for challenging behavior and it is based on three major principles:

- Many young children engage in challenging behavior in the course of early development. The majority of these children respond to developmentally appropriate management techniques.
- DEC believes strongly that many types of services and intervention strategies are available to address challenging behavior.
- DEC believes strongly that families play a critical role in designing and carrying out effective interventions for challenging behavior.

Questions Overview

Page 9 ..... Do the discipline procedures in the Part B regulations apply to preschoolers with disabilities?

Page 9 ..... Are there protections for children not yet eligible for special education and related services who have engaged in behavior that violated any rule or code of conduct of the school district?

Page 10 ..... Do the Part B regulations contain provisions that promote preventive measures for addressing discipline problems?

Page 11 ..... What can I do if a child with a disability in a preschool setting is exhibiting challenging behaviors that are interfering with the activities of the child and the other children in that setting?

Page 12 ..... Can a child be removed from his/her program for engaging in challenging behaviors?

Page 12 ..... What services must the school district/public agency provide to a preschool child with a disability who has been removed or suspended for up to, but not more than, 10 school days in a school year?

Page 12 ..... What services must a school district/public agency provide for a preschool child with a disability who is removed or suspended for more than 10 school days in a school year?

Page 13 ..... Under the discipline procedures in the Part B regulations, when must a functional behavioral assessment and behavioral intervention plan be developed and/or reviewed?

Page 14 ..... How do the IDEA discipline requirements define a "change in placement"?

Page 14 ..... Can I change a preschooler's placement because of behavior?

Page 14 ..... What disciplinary procedures can be used when the child is exhibiting dangerous behavior and the school district and the parents do not agree?

Page 15 ..... What disciplinary procedures can be used if a child has a weapon or drugs at school?

Page 16 ..... What procedures must a school district/public agency follow when a change in placement is being considered or is ordered by a hearing officer during disciplinary procedures?

Page 16 ..... What are the procedures for conducting a manifestation determination under the discipline procedures?

Page 17 ..... If the manifestation determination review concludes that the child's behavior is not related to the child's disability, what disciplinary procedures apply?

Back Cover..... How can I address a preschooler's challenging behavior through the evaluation, IEP, personnel development and discipline procedures of IDEA?

Questions and Answers

Q. Do the discipline procedures in the Part B regulations apply to preschoolers with disabilities?

A. Yes. The discipline procedures in the Part B regulations apply to all children with disabilities ages 3 through 21 years. These requirements are found in 34 CFR §300.519-529. The requirements apply even if the school district/public agency places a child in a non-district program, e.g. child care, Head Start, etc. in order to provide FAPE.

Each state must have in effect a policy that provides for the provision of a free appropriate public education for all children with disabilities including those who have been suspended or expelled from school. (34 CFR §300.121(a))

Q. Are there protections for children not yet eligible for special education and related services who have engaged in behavior that violated any rule or code of conduct of the school district?

A. The discipline procedures in the Part B regulations include protections for children who have not been determined eligible for special education and related services but who have engaged in behavior that violated any rule or code of conduct of the school district. These provisions apply in the case of a preschool child currently enrolled in the public school system, (e.g. enrolled in a district kindergarten or a prekindergarden program).

The regulations specify that the child's parents can assert any of the protections included in the discipline procedures in the Part B regulations, if the district had knowledge that the child was a child with a disability. Generally, the school district is assumed to have "knowledge" if:

- the parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) that the child is in need of special education and related services;
- the behavior or performance of the child demonstrates the need for special education and related services;

(answer continued)

- the parent has requested an evaluation; or
- the teacher of the child or other personnel of the school district has expressed concern about the behavior or performance of the child to the director of special education of the agency, or to other district personnel in accordance with the district's child find or special education referral systems.

The regulations also include exceptions and conditions that apply if there is no basis of knowledge by the school district. (34 CFR §300.527)

A Note From DEC:
If a child is enrolled in a non-school district program, e.g. child care, etc. and not yet considered Part B eligible, and engages in such behavior, the program and/or the parents may choose to use the occasion as a referral to the school district/public agency for evaluation to determine eligibility under Part B.

Q. ***Do the Part B regulations contain provisions that promote preventive measures for addressing discipline problems?***

A. Yes. There are specific provisions in the Part B regulations that assist in proactively addressing challenging behaviors (see fold-out chart) including:

- The state's Comprehensive System of Personnel Development (CSPD) must include personnel training activities that address enhancing the ability of teachers and others to use strategies, such as behavior interventions, to address the conduct of children with disabilities that impedes the learning of these children and others. The CSPD must also provide for the joint training of parents and special education, related services, and general education personnel. (34 CFR §300.382(f) and (j)).

- In developing the IEP or IFSP, the team must consider if the child has challenging behaviors that impede the learning of the child or others. In the case of a child whose behavior impedes his or her learning or that of others, the team must consider, if appropriate, positive behavioral interventions, and other supports to address that behavior. If, as a result of these considerations, the team determines that a child needs a particular device or service (including an intervention, accommodation or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP or IFSP. (34 CFR §300.346(a)(2)(i) and (c)).

The introduction section of the Part B regulations, "Discipline for Children with Disabilities" which states that "If a child has behavior problems that interfere with his or her learning or the learning of others, the IEP team must consider whether strategies, including positive behavioral interventions, strategies, and supports are needed to address the behavior. If the IEP team determines that such services are needed, these must be added to the IEP and must be provided." (Question #2, p 12415)

- As a member of the IEP team, the regular education teacher of a child with a disability must, to the extent appropriate, participate in the development, review and revision of the IEP or IFSP, including assisting in the determination of:
  - appropriate positive behavioral interventions and strategies for the child; and
  - supplementary aids and services, program modifications or supports for school personnel that will be provided for the child. (34 CFR §300.346(d))

Additional clarification on this issue can be found on p.12620 in Attachment 1 (Analysis of Comments and Changes), which accompanied the Part B regulations: "If IEP teams are proactively addressing a child's behavior that impedes the child's learning or that of others in the development of IEPs, those strategies, including positive behavioral intervention, strategies, and supports in the child's IEP will constitute the behavioral intervention plan..."

- The discipline procedures require the development of a "behavioral intervention plan" for the child proactively, as a part of the IEP process within 10 business days of (1) when the child is first removed for more than 10 school days in a school year, and (2) whenever the child is subject to a disciplinary change of placement. This plan is to be based upon a "functional behavioral assessment". These two terms are not defined in the regulations. (34 CFR §300.520(b)).

A Note from DEC:

According to the Journal of Positive Behavior Interventions: (1999, Vol. 1, No. 1) the concept of positive behavior intervention refers to: a) reducing difficulties such as excessive problem behavior and b) improving social or activity engagement through the use of positive intervention strategies. Positive strategies emphasize agreeable interactions, are non-coersive, and do not rely on coercion or punishment. Positive strategies are designed to build new competencies so that beneficiaries are better equipped to handle future circumstances...Implicit is the treatment of individuals with respect and dignity.

Q. *What can I do if a child with a disability in a preschool setting is exhibiting challenging behaviors that are interfering with the activities of the child and the other children in that setting?*

The introductory section of the Part B regulations, "Discipline for Children with Disabilities" discusses how schools can address challenging behaviors through appropriate instructional and/or related services, including conflict management, behavior management strategies, and measures such as timeouts and restrictions in privileges, so long as these are not inconsistent with the child's IEP. (Question #4, p. 12415)

A. The most important thing to remember is to discuss behavior as a part of the IEP process. The development of a behavioral intervention plan, if appropriate, can address current challenging behavior and include strategies for preventing future behavioral problems. If the child manifests the behavior after the IEP has been developed, then the IEP team should be reconvened to determine the appropriate next steps in addressing the behavior. This could include additional evaluations, conducting a functional behavior assessment, or amending the IEP or changing the child's placement.

Q. *Can a child be removed from his/her program for engaging in challenging behaviors?*

A. There may be instances when a child may be removed from his or her current placement for not more than 10 consecutive school days, whenever such discipline is administered consistent with the removal of nondisabled children.

Additional removals of not more than 10 consecutive school days in that same school year for separate instances of misconduct are permissible as long as those removals do not constitute a change in placement (see below).

An important reminder in an introductory section of the Part B regulations, "Discipline for Children with Disabilities" states that "If a child's IEP or behavior intervention plan addresses a particular behavior, it generally would be inappropriate to utilize some other response, such as suspension to address that behavior." (Question #4, p. 12415)

It is important to note that once a school district/public agency removes a child for more than 10 school days in a school year (regardless of whether they were consecutive), **on the 11th day of removal,** additional protections apply for the child in terms of the provision of services and involvement of the IEP team. This is discussed in the next several questions. (34 CFR §300.520)

Q. *What services must the school district/public agency provide to a preschool child with a disability who has been removed or suspended for up to, but* not *more than, 10 school days in a school year?*

A. School districts are not required to provide any services to a preschool child who has been removed from his or her current placement for 10 school days or less in a school year if services are not provided to a student without disabilities who has been removed for the same reasons and for the same number of days.

Q. *What services must a school district/public agency provide for a preschool child with a disability who is removed or suspended for* more *than 10 school days in a school year?*

A. As long as no change in placement has occurred (see below), a school district/public agency is required to provide services beginning on the 11th day of removal and any removal

thereafter, to the extent necessary to enable the child to progress appropriately in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP or IFSP. School personnel, in concert with the child's special education teacher, make these determinations about progress in the general curriculum and advancement towards achieving IEP or IFSP goals. There is no requirement that the parents be involved in these decisions, but school districts should, as best practice, include parents when making these decisions. By this time, a functional behavioral assessment and intervention plan should either be developed or reviewed by the IEP team which includes the parents of the child. (See below.)

Q. ***Under the discipline procedures in the Part B regulations, when must a functional behavioral assessment and behavioral intervention plan be developed and/or reviewed?***

A. Within 10 business days after first removing the child for *more* than 10 school days in a school year (i.e., the 11th day of removal or when a removal constitutes a change in placement), the following actions must be taken by school district personnel:

- If the district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in removal occurred, the district must convene an IEP meeting to develop an assessment plan. Once a functional behavioral assessment is completed, the IEP team must convene to develop appropriate behavioral interventions; and
- If the child already has a behavioral intervention plan, the IEP team must meet to review the plan and its implementation and modify it as necessary to address the challenging behavior.

Subsequent IEP or IFSP reviews may be necessary to review/modify the behavioral intervention plan. If one or more members of the IEP team believe that modifications are needed in the plan, the IEP team must meet to modify the plan and its implementation to the extent the team determines necessary.

Q. *How do the IDEA discipline requirements define a "change in placement"?*

Additional clarification on this issue can be found in Attachment 1, (Analysis of Comments and Changes), which accompanied the final Part B regulations in the March 12, 1999 Federal Register on p. 12619: "Portions of a school day that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement."

A. A change of placement for disciplinary purposes occurs if:

- the removal of the child is for more than 10 consecutive school days; or
- the child is subject to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removal to one another. (34 CFR §300.519)

A Note from DEC:
DEC believes that effective services and intervention strategies are available to prevent or address the challenging behaviors of young children. Practices such as sending a child home for portions of a particular day or days because of challenging behaviors would be considered a disciplinary action that could rise to the level of removal or change in placement. The IEP or IFSP is the appropriate vehicle for addressing challenging behavior.

Q. *Can I change a preschooler's placement because of behavior?*

A. As in any situation in which the placement or the services and supports being provided may not be appropriate, the IEP team should be reconvened and with school district and parent agreement, a change in placement may occur. The discipline procedures would not be necessary in this case.

Q. *What disciplinary procedures can be used when the child is exhibiting dangerous behavior and the school district and the parents do not agree?*

A. School personnel may request that an independent hearing officer consider a change in placement of a preschool child who is exhibiting dangerous behaviors. If the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the district can place the child in an interim alternative educational setting for no more than 45 calendar days.

This alternative setting is one that is proposed by school personnel who have consulted with the child's special education teacher. In making this decision, the hearing officer must consider the appropriateness of the child's current placement and whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement including the use of supplemental aids and services.

The criteria for determining the setting is further described in the regulations. At the conclusion of the period specified by the hearing officer (no more than 45 calendar days), if the district does not invoke any additional discipline procedures, the child returns to the placement he/she was in when the behavior occurred. It would be reasonable to expect that the parents and school district personnel, during the period of time the child is in the interim alternative setting, had been meeting to discuss and determine additional strategies for dealing with the child's challenging behaviors. (34 CFR §300.521)

Q. ***What disciplinary procedures can be used if a child has a weapon or drugs at school?***

A. In the rare instance that a young child possesses a weapon or drugs, the Part B provisions apply. If a child with a disability brings a weapon to school or knowingly possesses, uses or sells drugs at school or during a school function, school personnel may order a change in placement of the child to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 calendar days.

The interim alternative educational setting for weapons and drug violations must be determined by the IEP team. At the conclusion of the time period specified by school personnel (not more than 45 calendar days), if the district does not invoke any additional discipline procedures, the child returns to the placement he/she was in when the behavior occurred. It would be reasonable to expect that the IEP team, during the period of time the child is in the interim alternative setting, would meet to determine future strategies for

(answer continued)

dealing with the child's challenging behaviors. (34 CFR §300.520 and §300.522)

Q. ***What procedures must a school district/public agency follow when a change in placement is being considered or is ordered by a hearing officer during disciplinary procedures?***

A. If a district is considering, or a hearing officer has ordered, a change of placement for a preschool child because of challenging behaviors, the school district/public agency must:

- Provide the parents with the procedural safeguards notice required under Part B of IDEA no later than the date on which the decision to remove the child is made; and
- Conduct a review of the relationship between the child's disability and the behavior subject to the disciplinary action. This review, called a manifestation determination, must be conducted immediately, if possible, but no later than 10 school days after the date on which the decision to remove the child is made. (34 CFR §300.523)

Q. ***What are the procedures for conducting a manifestation determination under the discipline procedures?***

A. The IEP team, including the parents and other qualified personnel, must meet to conduct the review. The procedures for conducting the review are contained in the Part B regulations at 34 CFR §300.523. After reviewing all relevant information on the child, including information supplied by the parent and from observations of the student, the team determines:

- if the IEP or IFSP and the current services and placement are appropriate;
- if the child understood the impact and consequences of the behavior; and
- if the child could control the behavior.

If the team determines that any of the above standards were not met, the behavior must be considered a manifestation of

the child's disability. If the review identifies deficiencies in the child's IEP or IFSP or placement or in their implementation, the school district/public agency must take immediate steps to remedy those deficiencies. (34 CFR §300.523)

Q. ***If the manifestation determination review concludes that the child's behavior is not related to the child's disability, what disciplinary procedures apply?***

A. If the IEP team and the other appropriate professionals conclude that there is no relationship between the child's disability and the behavior, then the relevant district procedures applicable to children without disabilities apply. The IEP team determines the extent to which services are necessary to enable the child to appropriately progress and meet the goals of their IEP or IFSP. The parent may appeal these decisions, including the manifestation determination or the placement decision. Specific procedures related to expedited due process hearings and the child's placement during the appeal are contained in the Part B regulations. (34 CFR §300.524-526)

Q. ***How can I address a preschooler's challenging behavior through the evaluation, IEP, personnel development and discipline procedures of IDEA?***

A. See the pull-out chart attached to the inside back cover.

Notes

Notes

Selected Part B Provisions that Address a Preschooler's Challenging Behavior

Evaluation Procedures:

Provide for the initial identification of challenging behaviors exhibited by a preschooler for use in program development to include:

Identification of social and emotional status through evaluation process.

Assessing relative contribution of behavioral factors.

Identifying all preschooler's special education and related services needs whether or not commonly linked to disability category in which child has been classified.

Gathering relevant functional and developmental information, including parental input to enable preschooler to participate in "Appropriate Activities."

Re-evaluating, as necessary, the challenging behaviors for the purpose of revising the child's IEP or completing functional behavioral assessment.

Note: Initial evaluation of preschooler's challenging behaviors may serve as functional behavioral assessment for disciplinary procedures.

Discipline Procedures:

Provide for dealing with significant challenging behaviors exhibited by a preschooler through the discipline procedures, to include:

Removal of ten (10) consecutive school days or less in the same school year:

- Determination made by school personnel;
- For any violation of school rules that apply to non-disabled children; and
- No services required if services are not provided to non-disabled children similarly removed.

Additional removals of ten (10) consecutive school days or less in the same school year if it does not constitute a change of placement:

- Determination made by school personnel for separate incidents of misconduct;
- No pattern of removals—no change of placement;
- Services provided to the extent necessary to enable child to appropriately progress in general curriculum and advance toward achieving goals set out in IEP;
- School personnel in consultation with child's special education teacher determine services; and
- Conduct a functional behavioral assessment and implement/review a behavioral intervention plan developed by IEP team. Behavorial intervention plan to be developed within ten (10) business days of removal. Assessment as soon as practicable. IEP team to modify plan if necessary.

IEP Procedures:

Provide for addressing challenging behaviors through the IEP process, to include:

Consideration by IEP team of behaviors that impede a preschooler's learning or that of others.

Identifying strategies, including positive behavioral interventions, strategies and supports to address behavior.

Regular education teacher assisting in determing appropriate positive behavioral interventions and strategies for the preschooler.

Regular education teacher assisting in determining supplementary aids and services, program modifications or supports for school personnel to be provided for the child.

Addressing challenging behaviors in content of IEP, including:

- Impact of behaviors on preschooler's participation in appropriate activities;
- Measurable annual goals, including benchmarks or short term objectives specifically related to behaviors;
- Special education, related services, supplementary aids/services, program modifications or supports required to:
  1. Advance appropriately toward attaining annual goals that address challenging behaviors;
  2. Ensure involvement and progress in appropriate activities; and

Removals for more than ten (10) consecutive school days or pattern of removals which constitute a change of placement:

- A pattern—series of removals that cumulate to more than ten (10) school days in a school year, must consider length, total time, and proximity of removals;
- IEP team determines services required by child to appropriately progress in general curriculum and advance toward achieving goals set out in IEP;
- Conduct a functional behavioral assessment and implement/review a behavioral intervention plan developed by IEP team. Behavioral intervention plan to be developed within ten (10) business days of removal. Assessment soon as practicable. IEP team to modify plan if necessary;
- Provide parents with procedural safeguards notice no later than the date on which decision to remove child is made, includes parental right to appeal decisions; and
- Conduct a manifestation determination review within ten (10) school days after decision to remove child is made.

Removals for dangerous behaviors—injury to self or others:

- Determination made by independent hearing officer in expedited due process hearing;
- School personnel in consultation with child's special education teacher have proposed an appropriate interim alternative educational setting;
- Placement by hearing officer for no more than 45 calendar days in an appropriate interim alternative educational setting;
- Conduct a functional behavioral assessment and implement/review a behavioral intervention plan developed by IEP team. Behavioral intervention plan to be developed within ten (10) business days of removal. Assessment as soon as practicable. IEP team to modify plan if necessary;
- Conduct a manifestation determination review within ten (10) school days after decision to remove child is made;
- Provide parents with procedural safeguards notice no later than the date on which decision to remove child is made, includes parental right to appeal decisions; and
- At conclusion of removal period (no more than 45 calendar days), unless district invokes additional discipline procedures, preschooler returns to placement he/she was in when behavior occurred.

3. Be educated and participate with non-disabled children and other children with disabilities.

Evaluating progress toward addressing challenging behaviors identified in annual goals, including reporting results to parents and achievement of goals by end of the year.

Reviewing and revising of preschooler's IEP in order to assess effectiveness of steps taken to address challenging behaviors related to any lack of expected progress toward the annual goals.

Personnel Development Procedures:
Provide for the ongoing implementation of a state's comprehensive system of personnel development that addresses improvement strategies for all individuals that work on preschoolers' challenging behaviors, to include:

Enhancing the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of preschoolers with disabilities that impedes their learning or that of others.

Acquiring and disseminating significant knowledge derived from educational research and other sources on challenging behaviors, including, as appropriate, the adoption of promising practices, materials and technology.

Conducting joint training on strategies for addressing challenging behaviors with parents and special education, related services, and general education personnel.

Removals for weapons or drugs:
- Determination made by school personnel to extent removal would be applied to children without disabilities;
- IEP team determines interim alternative educational setting;
- Placement by school personnel for no more than 45 calendar days;
- Conduct a functional behavioral assessment and implement/review a behavioral intervention plan developed by IEP team. Behavioral intervention plan to be developed within ten (10) business days of removal. Assessment as soon as practicable. IEP team to modify plan if necessary;
- Conduct a manifestation determination review within ten (10) school days after decision to remove child is made;
- Provide parents with procedural safeguards notice no later than the date on which decision to remove child is made, includes parental right to appeal decisions; and
- At conclusion of removal period (no more than 45 calendar days), unless district invokes additional discipline procedures, preschooler returns to placement he/she was in when behavior occurred.

Removals for behaviors that are not a manifestation of the child's disability:
- IEP team and other qualified personnel, in a meeting, determine that the behavior was not a manifestation of the child's disability;
- District's discipline procedures for children without disabilities apply in the same manner to children with disabilities;
- Conduct a functional behavioral assessment and implement/review a behavioral intervention plan developed by IEP team. Behavioral intervention plan to be developed within ten (10) business days of removal. Assessment as soon as practicable. IEP team to modify plan if necessary;
- IEP team determines extent to which services are necessary to progress in general curriculum and achieve annual goals; and
- Provide parents with procedural safeguards notice no later than the date on which decision to remove child is made, includes parental right to appeal decisions.

IDEA Local Implementation by Local Administrators Partnership

ILIAD

1920 Association Drive

Reston, VA 20191

877.CEC.IDEA

www.ideapractices.org

Families and Advocates Partnership for Education

FAPE

4826 Chicago Avenue South

Minneapolis, MN 55417

888.248.0822

www.fape.org

The Policymaker Partnership

PMP

1800 Diagonal Road

Suite 320

Alexandria, VA 22314

877.IDEA.INFO

www.ideapolicy.org

Associations of Service Providers Implementing IDEA Reforms in Education Partnership

ASPIIRE

1920 Association Drive

Reston, VA 20191

877.CEC.IDEA

www.ideapractices.org

29

ISBN 0-86586-366-0